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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 519

MARVIN HAYUTIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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The Daily Record Co., Baltimore, Md. 21203

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Marvin Hayutin, Movant, respectfully moves for leave to file a second Petition for rehearing of the Order of this Court denying the Petition for Writ of Certiorari in this case, denied on November 25, 1968, Petition for Rehearing having been denied on January 13, 1969.

Although Rule 58(4) bars consecutive Petitions for Rehearing, the Court clearly has power in its discretion to waive the requirements of the rule and to entertain the

Petition. *Cahill v. New York, N.Y., N.H. and H.R. Company,* 351 U.S. 183 (1956).

Rehearing is sought at this time on the ground that the right to a fair trial guaranteed the defendant under the Due Process Clause of the Fourteenth Amendment was denied to your Movant by the actions of the government in the trial of the Movant, in presenting as its sole evidence to prove the conspiracy alleged against the Movant, the testimony of numerous co-conspirators, all of whom were coerced and induced to testify by the implied threat of prosecution and/or the removal of that threat by the granting of immunity in exchange for their testimony. The question sought to be presented by the Petition is whether the government should be permitted to influence a witness by coercion when an individual commits a crime if he attempts to do the same. All of the witnesses who were co-conspirators indicated that they had been subjected to many interviews by the U. S. Attorney's Office; in some cases as many as 40 or 50 times prior to the time of trial. From these many interviews came testimony by the co-conspirators which was directly in variance with sworn testimony previously given by these same witnesses. These co-conspirators were then granted immunity from prosecution and/or at the least no jail sentence. All of these co-conspirators *admitted* that they were perjurors and had in fact perjured themselves in sworn testimony before the Securities Exchange Commission in their investigation of the conspiracy. Yet none of these people were prosecuted by the government.

Coercion can take many forms. *U. S. Ex rel. Corbo v. LaVallee,* 361 U.S. 950 (1960), 270 F. 2d (1959). The giving of immunity of testimony contains within itself the threat of prosecution if such testimony is withheld, is it not a monstrous pervision of justice to allow the government to

take actions and secure testimony by avenues which are denied to the individual? The rights of every defendant in a Federal trial, if such a concept is permitted, are trampled into the dust by the exercise of tyranny approaching the "divine right" given to kings, but denied by our Constitution and its amendments to our government against a free people. The safeguard of due process under the Fourteenth Amendment which guarantees an individual a fair trial has not only been brushed aside, but has been brutally violated by such a governmental exercise of "divine right".

It was freely admitted by the coerced witnesses that they were perjurors who had lied previously and yet the government presented as its entire case the testimony of these self-confessed perjured witnesses which was a compounding of the government's horrendous conspiracy to persecute the Movant and a clear violation of his right to due process. *O'Connell v. Ragen,* 212 F. 2d 272 (1954); *Casheer v. Hudspeth,* 316 U.S. 683 (1942), 121 F. 2d 914 (1941).

CONCLUSION

For the reasons set forth, it is respectfully urged that permission be given for the filing of a second Petition for rehearing so that this Court may reconsider its Order denying Petition for Writ of Certiorari hereinbefore filed.

Respectfully submitted,

STANLEY PAUL,

Counsel for Movant.

MORTON H. PERRY,

Of Counsel.

Dated: March 7, 1969.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Motion is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

STANLEY PAUL,

Counsel for Movant.